

The Libyan Republic:

The Supreme Court:

The administrative chamber

In its public session on Wednesday, 26 June 2019, in Tripoli

[.....]

Has issued the following ruling in the administrative appeal number 151\64K forwarded by:

- 1- The President of the Presidential Council in the Government of National Agreement acting in his capacity,
- 2- The Minister of Foreign Affairs and international cooperation acting in his capacity.
- 3- The Minister of Home Affairs acting in his capacity.
- 4- The Minister of Defense acting in his capacity.
- 5- The President of the House of Representatives acting in his capacity.

Represented by (Acting on their behalves) the case management

Against the respondents 1... 2... 3... 4... 5...6..., represented by Mr. Abdulhadi Ali Alazumi, on the ruling issued by the Court of Appeal in Tripoli, administrative chamber, on 22/3/2017 in the administrative case number 30/2017.

[.....]

Facts of the case:

The respondents have filed lawsuit number 30/2017 before the Court of Appeal of Tripoli, administrative chamber, against the administration challenging their decision, namely the Memorandum of Understanding which was signed on 2/2/2017, concluded between the president of the Presidential Council of the Government of National Agreement acting in his capacity and the Italian Prime Minister, on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic. The respondents have argued in their lawsuit number 30/2017 that signing the Memorandum of Understanding by the President of the Presidential Council in the Government of National Agreement, acting in his capacity, is to be considered an administrative act which can be challenged before the administrative judiciary, and they have submitted many arguments which culminated in asking the court to rule in an urgent manner to temporarily suspend the implementation of the memorandum of understanding, and in the substance of the case to declare null and void, and therefore to annul the decision [i.e. Memorandum of Understanding, MA]. The court has issued a ruling that accepts the lawsuit regarding its admissibility, and it has ruled regarding the urgent part to temporarily suspend the implementation of the memorandum of understanding.

The verdict:

Procedures

[.....]

The reasons:

The appeal is admissible because it fulfills the legal requirements.

The appellants are arguing that the disputed ruling implies an error in applying the law and shortcomings regarding its reasoning because the court has erred in the characterization of the case when it considered that the contested act [the Memorandum of Understanding, MA] as an administrative act, while it is not. Signing a Memorandum of Understanding between Libya and Italy is not an administrative act. On the contrary, it is a sovereign act issued by the executive as a ruling authority, which actions fall outside the scope of judicial supervision. And when a ruling violates that [i.e., when a court decides on something outside the scope of its jurisdiction, MA], then there is an error in applying the law it [i.e. the ruling, MA] must be revoked.

Because what is said above is entirely correct, and because it has been already established that functional jurisdiction is one of the rules which considered to be a matter of public order, the court must investigate it firstly and primarily, even before investigating the case's admissibility and ruling on the substance of the case; the court must decide on it even if the parties have not argued it.

Article 6 of Law no. 88 year 1971 regarding the Administrative judiciary has prohibited the administrative courts from ruling on a decision when it concerns a sovereign act, and has furthermore given the court the discretion to characterize a treatment as an administrative act and therefore to decide on it, or as a sovereign act and therefore to abstain from hearing the case. Furthermore, the established case law has defined a sovereign act as an act issued by the supreme political authority, being the ruling authority in the country, aiming at achieving the collective political interest, organizing the state's relationship with other states, guaranteeing its security and achieving a supreme interest inside and outside the country. These acts are related to different aspects and assessments and are often based on complex considerations and options that require a large margin of discretion, therefore it is to the advantage of the country and its security to give to the competent authority in the state the freedom to decide on these matters without judicial supervision. There are several clear examples that should definitely fall outside the scope of the judicial oversight, for example: managing the state's foreign affairs, declaring war or a state of emergency, inviting the parliament to assemble and the parliament's relationship with the government, and decisions related to appointing the ministers and the prime minister.

The disputed decision concerns the Memorandum of Understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, signed by the Italian Prime Minister and the President of the Presidential Council in the Government of National Agreement. The contested decision [the Memorandum of Understanding, MA] aims to achieve a common agreement on certain

fields between two countries, which are undoubtedly considered to be political choices which aim at managing the Libyan foreign affairs, organizing its relationship with other states in a way which guarantees the achievement of its interests. Therefore, it cannot be characterized as an administrative act, rather in fact, this is a sovereign act that should not be subject to any judicial supervision, and therefore a judge must abstain from hearing the case because of lack of the functional jurisdiction.

And when a disputed judgment violates this by accepting the case and suspending temporarily the contested act [the Memorandum of Understanding, MA], then it errs in applying the law. The court did not have to investigate further whether the president of the presidential council had or did not have the capacity to sign the Memorandum of Understanding because when the court finds that a case falls outside its jurisdiction, then it must give a ruling on that point and it is prohibited, after finding that it does not have jurisdiction, from going further to address any issue or arguments regarding rather the case admissibility or the case substance.

For these reasons all:

This court finds that the appeal is admissible and that the contested ruling number 30/2017, issued by the Court of Appeal of Tripoli, the administrative chamber, is to be annulled due to the lack of functional jurisdiction.